

COURT MINUTES OF FINAL PRETRIAL CONFERENCE

UNITED STATES of AMERICA,
Plaintiff,

v.

CASE NO. 08-CR-192

KIRBY BENNETT

Defendant.

HON. J. P. STADTMUELLER PRESIDING

DATE: October 21, 2008

TIME SCHEDULED: 8:30 a.m.

LAW CLERK: Carey Villeneuve

TIME CALLED: 8:31 a.m.

COURT REPORTER: John Schindhelm

TIME FINISHED: 8:55 a.m.

GOVERNMENT BY: Erica O'Neil

DEFENDANT BY: Christy Hall

Notes:

8:31 Appearances

8:32 Court details the issue of the motions to suppress evidence before the court.

Court states that given the press for time, and the posture of the case, the court is going to rule on the motions from the bench.

8:33 Court gives procedural history for motions to suppress evidence and requests for evidentiary hearings.

8:34 Based upon this court's de novo review, this court holds that it is very clear that the Leon good faith exception applies to this case, so the court adopts all of Magistrate Goodstein's recommendations: namely that the defendant is not entitled to a Franks hearing, that the evidence found as a result of the search warrant should not be suppressed because the Leon good faith exception does apply, and that the statements that the defendant has sought to have suppressed should not be suppressed.

8:39 In regards to the Franks hearing, Mr. Bennett has only alleged one ground that would be relevant to the Franks hearing - that he was out of town when he allegedly made the statement to the CI. However, he has not shown that the affiant knew or should have known that the CI's statement was false, if it even was (which defendant has not shown that it was).

8:42 As to the statements that defendant has sought to have suppressed, those statements were not made in a situation in which courts would hold the actions or words of the officers to be interrogation.

8:45 As to the search warrant, while it is a close case whether or not the search warrant was supported by probable cause, it is not a close case whether or not the Leon good faith exception applies. It clearly does.

8:50 The court concludes that the police officer relied in good faith on the judicial officer's signing of the warrant.

8:51 The court adopts the Magistrate's recommendations.

8:51 Government states it is ready to go to trial.

8:52 Defense asks for a brief adjournment of two weeks from the scheduled trial date.

8:53 Court directs parties to file Final Pre-Trial Reports by Friday, October 24, 2008.

Final Pre-Trial Conference Monday, is set for **October 27, 2008**. If case goes to **trial**, it will be **Monday November 17, 2008**.

8:55 Court stands in recess.